DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

*2101 L Street NW • Washington, DC 20037-1526*
*Tel (202) 785-9700 • Fax (202) 887-0689*

*Writer's Direct Dial: 202-828-2226*
*Author's Internet: KramerA@dsmo.com*

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

December 19, 1996

William F. Caton, Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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Re: Request for Clarification of Effective Date of Payphone Order DA Provision

Dear Mr. Caton:

On behalf of the American Public Communication Council, Inc. ("APCC"), this is to request a staff clarification of the effective date of paragraph 62 of the Report and Order, FCC 96-388, released September 20, 1996 in CC Docket No. 96-128, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (the "Payphone Order"). Paragraph 62 addresses compensation for directory assistance ("DA") calls. It provides that (1) payphone providers are permitted to "charge a market-based rate" for such calls; and (2) "if a LEC imposes a fee on independent payphone providers for '411' calls, then the LEC must impute the same fee to its own payphones for this service." Payphone Order ¶ 62.

The Payphone Order does not specifically state when the DA provision is effective. APCC believes that the Commission intended for paragraph 62 to be effective 30 days after the publication of the Payphone Order in the Federal Register, or November 6, 1996,[1] as is generally the case with the order's compensation provisions. However, because some provisions of the order are not effective until one year following Federal Register publication, or October 7, 1997, and in light of the importance of the provision to independent payphone providers, APCC is requesting clarification of the DA provision's effective date.

APCC believes that paragraph 62 is effective as of November 6, 1996 for two reasons. First, Section 276's command that the Commission ensure fair compensation for each and every completed call inarguably includes DA calls. It would be inconsistent with that statutory mandate if paragraph 62 is not effective for a full year and payphone

[1] The Payphone Order appeared in the Federal Register on October 7, 1996. See 61 Fed. Reg. S2307.

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providers continued to be unable to receive compensation for DA calls made from their payphones. Second, the Payphone Order requires LECs to end all subsidies and discrimination no later than April 15, 1997. The LECs' practice of charging independent providers for DA without imputing the same charge to their own payphone operations is clearly discriminatory and a subsidy. As mentioned above, there are two possible effective dates for the DA provision -- November 6, 1996 or October 7, 1997. The effect of the latter would be to allow the subsidization of DA calls to continue months after all other subsidies and discrimination are required to end. Therefore, if paragraph 62 is to be read consistently with the rest of the order, it must be effective November 6, 1996.

The Effective Date for Compensation Is November 6, 1996

Section 276 requires that the Commission "ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call. . . ." 47 U.S.C. § 276(b)(1)(A). In the Payphone Order, the Commission recognized that fair compensation for payphone providers has been far too long in coming and that there is a need for immediate relief. The Commission specifically acknowledged the need to "provide[] compensation to [payphone providers] as soon as possible." Payphone Order ¶ 126.

With regard to DA, the need for immediate compensation is particularly acute. In many jurisdictions, LECs are permitted to charge independent payphone providers for DA, but the independent providers are prohibited from passing that cost through to end users. The result is that independent providers lose money on every DA call made from every phone. This, clearly, is not "fair compensation." There is no other significant category of call for which payphone providers, as of November 6, 1996, would remain totally uncompensated.

If paragraph 62 is effective as of November 6, 1996, then independent payphone providers can begin to receive fair compensation for DA calls, as required by Section 276. Interpreting paragraph 62 as not being effective until nearly a year from now would fly in the face of the statutory command of Section 276 and the intent of both Congress and the Commission to provide compensation on an expedited basis to payphone providers.

DA Subsidies Must Be Terminated Before April 15, 1997

The second reason that the payphone provision must be effective as of November 6, 1996 is that the other possible effective date -- October 7, 1997 -- is completely inconsistent with the Payphone Order's provisions regarding the termination of LEC and BOC subsidization and discrimination in favor of their own payphone operations.

Section 276 mandated that the Commission terminate all "intrastate and interstate payphone subsidies from basic exchange and exchange access revenues." 47 U.S.C. § 276(b)(1)(b). Section 276 further mandated that the BOCs must discontinue any subsidization or discrimination in favor of their own payphone operations. 47 U.S.C. § 276(a). The Payphone Order requires that LECs terminate all subsidization of their payphone operations and discrimination against independent payphone providers on or before April 15, 1997. Payphone Order ¶¶ 367, 368.

With regard to DA, the Commission recognized in the Payphone Order that "while incumbent LECs in many jurisdictions currently do not charge the payphone caller for '411' calls made from their payphones, the LECs charge independent payphone providers for [DA] calls made from their payphones . . . ." Payphone Order ¶ 62. The Commission further recognized that in many jurisdictions, the independent providers "are not always allowed by the state to pass those [DA] charges on to callers." Id. The LECs meanwhile, are free to recover their DA costs out of general ratepayer funds. The result is a clear subsidy of the LECs' payphone operations, and discrimination against independent payphone providers.

If paragraph 62 is not interpreted as being effective until October 7, 1997 then the subsidization of DA will be permitted to continue for nearly a half year after all other subsidies are required to end, and would create a conflict between paragraph 62 and other portions of the Payphone Order. If, however, paragraph 62 is effective as of November 6, 1996, then there is no conflict, and the subsidization of DA will end, as it must, by April 15, 1996.

APCC respectfully requests that, for the reasons shown above, the Commission confirm that paragraph 62 of the Payphone Order is effective as of November 6, 1996.

Respectfully submitted,

Albert Kramer

Albert H. Kramer

AHK/pmd